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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,371	05/25/2001	Earl Walter Emerick	ROC920010109US1	3728
7590	03/04/2005		EXAMINER	
Gero G. McClellan Thomason, Moser & Patterson, L.L.P. 3040 Post Oak Boulevard, Suite 1500 Houston, TX 77056-6582			LANEAU, RONALD	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JE

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/865,371	EMERICK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ronald Laneau	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 December 2004.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-46 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-46 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    Paper No(s)/Mail Date. \_\_\_\_\_ .  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 01312005.                    5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

***Response to Amendment***

1. The amendment filed on 12/21/2004 has been entered. Claims 1-46 are still pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jong et al (US 6,192,403) in view of Bertram et al (US 2002/0156884 A1).

Jong discloses a method of operating a computerized system to provide computer recommendation information for a plurality of computers, including the steps of generating an operation profile for a computer using machine information specific to the computer (col. 11, line 64 to col. 12, line 6), wherein the operation profile indicates at least a usage trend for the computer and generating a recommendation for at least one computer system solution which satisfies at least the projected requirements (col. 12, line 63 to col. 13, line 7). Jong further discloses the steps of generating the operation profile, receiving the machine information from the computer via a network connection (col. 2, lines 41-48), and Jong's system performance can be collected at intervals shorter than the first timed intervals as claimed. a system wherein the plurality of system options are provided by a plurality of third party solution providers (col. 5, lines 60-65), further include the steps of configuring the at least one computer system solution to indicate system specifications and a price (col. 6, lines 32-38). Jon does not disclose a computer

system solution based on the usage trend as claimed but Bertram discloses determining projected requirements for at least one computer system solution based on the usage trend for the computer (figs 5A – 5D). It is well known that all computer system has configuration within and that user of the system is allowed to make modifications to the configuration whether it's the specifications or price.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the system solution based on the usage trend as taught by Bertram into the system of Jong because it would improve the performance of the system by monitoring and allowing a user to view the amount of usage and the performance analysis for the computer system.

***Response to Arguments***

4. Applicant's arguments filed on 12/21/04 have been fully considered but they are not persuasive.

Applicant's arguments about Jong failing to teach, show or suggest a method or a system which "determines projected requirements for at least one computer system solution based on the usage trend for the computer" are moot in view of the newly reference (Bertram et al) that discloses such limitations. Applicant further argues that Jong does not teach, show or suggest "allowing a user to modify the recommendation, configuring a system and indicating the system specifications and price." Contrary to applicant's arguments, both systems obviously would allow a user to make modifications in order to increase the performance of the system. Applicant's arguments are deemed unpersuasive, claims 1-46 are finally rejected.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (703) 305-3973. The examiner can normally be reached on Mon-Fri from 8:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RL

Ronald Laneau  
Examiner  
Art Unit 3627

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Ronald Laneau 2/28/05  
Primary Examiner